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*Mortgage Investment Trust and PNMAC*

*Capital Management, LLC*

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

ROBERTO VERTHELYI, on behalf  
of himself and all others similarly  
situated,

Plaintiff,

v.

PENNYMAC MORTGAGE  
INVESTMENT TRUST; PNMAC  
CAPITAL MANAGEMENT, LLC,

Defendants.

Case No. 2:24-cv-05028-MWF

**DEFENDANT PNMAC CAPITAL  
MANAGEMENT REPLY IN  
SUPPORT OF MOTION TO  
DISMISS PLAINTIFF'S  
COMPLAINT**

Hearing Date: November 18, 2024

Time: 10:00 a.m.

Place: Courtroom 5A

Judge: Michael W. Fitzgerald

1 Nothing in Plaintiff's opposition alters the fact that the Complaint makes no  
2 specific allegations of conduct by PNMAC Capital Management, LLC ("PCM") at all.  
3 Plaintiff's Complaint simply groups Defendants PennyMac Mortgage Investment Trust  
4 ("PMT") and PCM, together as "PennyMac," (*see* Compl. at 1, ECF No. 1) and fails to  
5 allege any facts supporting the inference that **PCM** violated the UCL. Indeed, Plaintiff's  
6 Complaint contains not a single allegation regarding any conduct of any kind by PCM.  
7 The only allegations in the Complaint about PCM are (1) that PMT "is externally  
8 managed by PNMAC Capital Management, LLC" (Compl. ¶ 2); (2) PCM is organized  
9 as a Delaware LLC (*id.* ¶ 29); and (3) PCM's address (*id.*).

10 Plaintiff's entire complaint is focused on what he believes he is owed by virtue of  
11 his ownership of preferred stock issued by *PMT*, not *PCM*. Plaintiff contends that the  
12 terms of the Articles Supplementary, read pursuant to the LIBOR Act, require that *PMT*  
13 issue dividends at a different rate. But the Complaint does not allege that PCM issues  
14 shares or dividends, and, as shown in the uncontested request for judicial notice, PCM  
15 is not a party to the Articles Supplementary.

16 This is improper group pleading and insufficient to state a cause of action against  
17 PCM. Nothing in Plaintiff's opposition alters the fact that the Complaint makes no  
18 specific allegations about PCM's conduct at all.

19 Additionally, Defendant PCM again joins in Defendant PMT reply in support of  
20 its motion to dismiss and the arguments set forth in PMT's reply are incorporated here  
21 by reference, and fully support the dismissal of all claims against PCM.

22 The cases cited by Plaintiff do not require a different result. In *Federal Trade*  
23 *Commission v. DeVry Education Group, Inc.*, Case No. CV-16-00579, 2016 WL  
24 6821112 (C.D. Cal. May 9, 2016), the court rejected the defendants' group pleading  
25 argument, holding that "[a]s the parent corporation of Defendants DVU and DNY,  
26 Defendant DEG is alleged to have both controlled the deceptive acts of its subsidiaries  
27 and directly participated in the dissemination of misleading advertisements." *Id.* at \*7.  
28 Here, there are no such allegations. First, *DeVry* involved a misleading advertising

1 scheme operated by multiple parties, not, as here, the effect of a Congressional act on  
2 the operation of a contractual obligation to which PCM is not a party. Second, Plaintiff's  
3 complaint does not allege that PCM did anything or is the "parent corporation" of PMT.

4 In *Doe One v. CVS Pharmacy, Inc.*, 348 F. Supp. 3d 967 (N.D. Cal. 2018), *aff'd*  
5 *in part, vacated in part*, 982 F.3d 1204 (9th Cir. 2020), the court rejected the defendants'  
6 group pleading argument but specifically stated that "the complaint does make clear the  
7 role Caremark California Specialty Pharmacy, LLC plays in filling prescriptions by  
8 mail." *Id.* at 980. Thus, in that case, the plaintiff had made at least some allegations of  
9 specific conduct by all the group defendants. Plaintiff makes no such allegations here.

10 Nor are Plaintiff's citations to PMT's SEC filings helpful. The language Plaintiff  
11 relies on simply states (again) that PMT is "managed" by PCM or "externally managed  
12 and advised" by PCM. (Pratsinakis Decl. ISO Opp'n Ex. 4, at 6, 16, 37, 53, ECF No.  
13 40-4.) This is no different from the lone allegation in Plaintiff's Complaint regarding  
14 PCM. Plaintiff still has not sufficiently alleged any obligation of PCM under the Articles  
15 Supplementary or act by PCM, only that he believes PMT (not PCM) owes him more  
16 money.

17 Plaintiff's complaint fails to allege any conduct or obligation by PCM and thus  
18 fails to state a claim against PCM and should be dismissed.

19  
20 Dated: November 4, 2024

Respectfully submitted,

21  
22 /s/ Matthew Donald Umhofer

23 UMHOFFER, MITCHELL & KING, LLP  
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25 *Attorneys for Defendants PennyMac*  
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